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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,516	07/20/2001	Timothy Glass	82543	2105

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/910,516

Applicant(s)

GLASS, TIMOTHY

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 7, 9, 10, 13, 14 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9, 10, 13, 14 and 19 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This final Office action is in response to the amendment (filed in response to the Notice of Non-Compliant amendment mailed May 3, 2005) by which claims 1 and 9 were amended, claims 3-5, 8, 11, 12, and 15-18 were canceled, and claim 19 was added.

Claim Objections

Claim 9 is objected to because the language of the phrases "opposite each" in line 6 and "other and whereby" in line 7 appears to be grammatically incorrect. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 9, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "each opening is large enough to view an entire compact disk storage container cover" in lines 6-7 of claims 1 and 9 renders the claims indefinite. *In particular*, a compact disk storage container cover is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element, i.e., compact disk storage container are of different shapes and sizes. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device

Art Unit: 3634

infringed the instant claims until someone else later added a compact disk storage container cover. *Accordingly*, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

The term "easy" in claim 19 (see line 10) is a relative term which renders the claim indefinite. The term "easy" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. \The term "may

The term "may" in the last line of claim 19 renders the claim indefinite since what "may be" to one "may not be" to another. *Thus*, the metes and bounds of the claim cannot be properly ascertained since one would not know whether the recitation proceeding the term "may" is being required by the claim.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above), claims 9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,844,230 (Hudson *et al.* '230).

Hudson *et al.* '230 disclose a tower for storage, display and unimpeded accessibility of articles which comprising a rigid elongated unitary structure (1) having a top (15), a bottom and a plurality of horizontal (15) and vertical (28) members positioned the top and bottom to form a plurality of cells which comprise openings, i.e., a front, rear and side opening, to permit unimpeded placement and removal of articles whereby two openings (bottom right corner and top left corner in Figure 7) are disposed opposite each other and a third opening (bottom left

Art Unit: 3634

corner in Figure 7) is structured such that a disk can be inserted into and removed therefrom; a base (3) and a shaft (6) fixed to the base (3) and rotatably connected to the cells, i.e., through element 9 and 12; the shaft (6) has a threaded end located proximate the base (3) and a connecting assembly (5) is attached to the threaded end to maintain the shaft (6) fixed to the base (3).

Insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above), claims 9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,033,626 (Platti '626).

Platti '626 discloses a tower for storage and display of articles comprising a rigid elongated unitary structure having a top, a bottom and plurality of horizontal and vertical members defining cells (Figure 2); a base (3) and a shaft fixed to the base and rotatably connected to the cells; a knob (5) is connected to the top; each cell has a front, rear and side opening; two openings (bottom and top middle pie-shaped segments in Figure 3) are disposed opposite each other and a third opening (right corner pie-shaped segment in Figure 3) is structured such that a disk can be inserted into and removed therefrom.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Platti '626 as applied to claims 9 and 13 above, and further in view of U.S. Patent No. 6,508,021 (Brozak, Jr. '021).

Platti '626 discloses the tower as advanced above.

Art Unit: 3634

The claim differs from Platti '626 in requiring a connector assembly mounted to the base and rotatably connected to the cells.

Brozak, Jr. 021 teaches the use of a connector assembly so that a tower can be rotated on a base.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tower of Platti '626 with a connector assembly, as taught by Brozak, Jr. for ease in use to the consumer since articles placed therein can be accessed more easily.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson *et al.* '230 in view of Brozak, Jr. 021.

Hudson *et al.* '230 disclose a tower for storage, display and unimpeded accessibility of articles which comprising a rigid elongated unitary structure (1) having a top (15), a bottom and a plurality of horizontal (15) and vertical (28) members positioned the top and bottom to form a plurality of cells which comprise two openings, i.e., one opening is on the left half of Figure 7 and the second opening is disposed on the right half of Figure 7, that are disposed opposite each other; a base (3) and a shaft (6) fixed to the base (3) and rotatably connected to the cells, i.e., through element 9 and 12; a connecting assembly (5) is attached to the threaded end of the shaft to maintain the shaft (6) fixed to the base (3).

The claim differs from Hudson *et al.* '230 in requiring a connector assembly mounted to the base and rotatably connected to the cells so that the cell structure can rotate while the base is stationary.

Art Unit: 3634

Brozak, Jr. 021 teaches the use of a connector assembly so that a tower can be rotated on a base.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tower of Hudson *et al.* '230 with a connector assembly, as taught by Brozak, Jr. for ease in use to the consumer since articles placed therein can be accessed more easily.

Allowable Subject Matter

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and claims 6 and 7 are objected to as being dependent upon a rejected base claim.

Response to Arguments

Applicant's arguments concerning claim 1 have been considered and view of the amendment to the claim, an indication of allowable subject matter has been advanced above.

Applicant's arguments with respect to claim 9 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting "two opening opposite each other" and a "third opening" in line 5-6 and 10, respectively, of claim 9. It is noted that although the Hudson *et al.* '230 and Platti '626 references remain utilized under Section 102, the grounds of rejection have been changed since the examiner has had to define additional elements, i.e., those of the openings, in order to meet the claim as amended by applicant.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

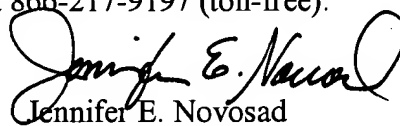
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

September 28, 2005